

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
GAS PLUS, INC.)	
)	
Serve: J.E. Hocker,)	
Registered Agent)	
Highway 72 North)	
or 904 Rt. 2)	
Salem, MO 65560)	
)	
HOCKER OIL COMPANY)	
)	
Serve: J.E. Hocker,)	
Registered Agent)	
Highway 72 North)	
or 904 Rt. 2)	
Salem. MO 65560)	
)	
TERRY RAY OUSLEY)	
)	
Serve at 1204 B)	
St. Mary's Blvd.)	
Jefferson City, MO 65109)	
)	
Defendants.)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS, RESTITUTION,
CIVIL PENALTIES AND OTHER COURT ORDERS**

COMES NOW the State of Missouri as Plaintiff in this action, by and through its Attorney General Jeremiah W. (Jay) Nixon and his assistant Stewart M. Freilich, and states as follows:

PARTIES

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapters 407 and 414, RSMo.¹

2. Defendant Gas Plus Inc. (Gas Plus) is a Missouri Corporation with its principal place of business at Highway 72 North in Salem Missouri. Gas Plus operates a gasoline station at 501 E. McCarty Street in Jefferson City, Missouri.

3. Defendant Hocker Oil Company (Hocker) is a Missouri Corporation with its principal place of business at 904 Rt. 2, Salem, Missouri. Hocker Oil Company employed Terry Ray Ousley, manager of the Gas Plus station at 501 E. McCarty Street in Jefferson City, Missouri.

4. Defendant Terry Ray Ousley (Ousley) is an individual, a Missouri resident and was manager of the Gas Plus station at 501 East McCarty in Jefferson City on September 20, 2002.

JURISDICTION

5. The Circuit Court has jurisdiction of this action pursuant to § 407.100 which provides:

- (1) Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitation, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.
- (2) In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds of accounts if the court finds their funds or property may

¹ All references, unless otherwise noted, are to Missouri Revised Statutes 2000.

be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

- (3) If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.
 - (4) The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including, but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.
 - (5) The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.
 - (6) The court may award to the state a civil penalty or not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance or procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.
 - (7) Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.
 - (8) The attorney general is authorized to enter into consent judgments or consent injunctions with or without admissions or violations of this chapter. Violation of any such consent judgment or consent injunction shall be treated as a violation under section 407.110.
6. Section 407.020 provides in pertinent part:
- (1) The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. . .is declared to be an unlawful practice. . . . Any act, use or employment declared unlawful by this

subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

7. The Circuit Court also has jurisdiction of this action pursuant to § 414.152.2 which provides:

The prosecuting attorney of any county in which a violation of any provision of this chapter occurs or the attorney general is hereby authorized to apply to any court of competent jurisdiction for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction to restrain any person from violating any provisions of this chapter.

8. Section 414.032 provides in pertinent part:

(1) All kerosene, diesel fuel, heating oil, aviation turbine fuel, gasoline, gasoline-alcohol and other motor fuels shall meet the requirements in the annual book of ASTM standards and supplements thereto. . . .

9. ASTM Standard Specification for Automotive Spark-Ignition Engine Fuel D 4814-88a states in pertinent part:

(6.1) The finished fuel shall be visually free of undissolved water, sediment, and suspended matter . . .

VENUE

10. Venue lies in the Circuit Court of Cole County, Missouri pursuant to § 407.100.7 and 414.152.2 because the alleged violations of § 407.020 and 414.032 occurred in Cole County.

STATEMENT OF FACTS

11. On the morning of September 20, 2002, Gas Plus sold gasoline to Missouri consumers at its station located at 501 East McCarty Street in Jefferson City, Missouri.

12. To plaintiff's knowledge and belief, the gasoline sold to Missouri consumers was supplied by Hocker.

13. After the gasoline was pumped into the fuel tanks of consumer vehicles, the vehicles were either unable to start or stopped running within a few blocks of the station.

14. The manager of the Gas Plus station on the morning of September 20, 2002 was Ousley, an employee of Hocker.

15. After the cars stalled, Ousley checked the gas tanks for water in the presence of a police officer and one tank tested positive.

16. The consumers had their vehicles towed to various automotive garages for repairs.

17. The gasoline supplied by Hocker, sold by Gas Plus and purchased by consumers contained water and sediment.

18. As a result of the water and sediment contained in the gasoline, consumers experienced problems with the operation of their vehicles.

19. These operational problems required that repairs be made to consumer vehicles.

20. A representative of Hocker Oil Company told a consumer's mechanic that the manager of Gas Plus put water in the gasoline.

MERCHANDISING PRACTICES ACT VIOLATIONS

21. Defendants Gas Plus Inc., Hocker Oil Company and Terry Ray Ousley have engaged in methods, acts, uses and practices of deception, fraud, false pretenses, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts in connection with the advertisement and sale of automotive gasoline, all in violation of § 407.020, RSMo. for reasons including, but not limited to, the following:

- a. Omitting to disclose to consumers that the gasoline they purchased from Gas Plus contained water and sediment and did not meet the requirements for automotive gasoline in Missouri.
- b. Engaging in the unfair practice of selling gasoline which does not meet the

requirements for automotive gasoline contained in Chapter 414 and which caused substantial injury to consumers.

FUEL REGULATION AND CONSERVATION VIOLATIONS

____22. Defendants Gas Plus, Inc., Hocker Oil Company and Terry Ray Ousley have violated § 414.032.1 by selling automotive gasoline which does not meet the requirements in the annual book of ASTM standards D 4814-88a (6.1).

RELIEF

WHEREFORE, Plaintiff requests this court to issue the following orders:

1. An Order of this Court finding that Defendants have violated the provisions of §§ 407.020 and 414.032.
2. A preliminary and permanent injunction issued pursuant to §§ 407.100 and 414.152 prohibiting and enjoining the defendants and their agents, servants, employees, representatives, and other individuals acting at their direction or on their behalf from violating §§ 407.020 and 414.032 through the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
3. An Order of this Court issued pursuant to § 407.100.4 requiring Defendants, jointly and severally, to provide full restitution to all consumers from whom Defendants have received monies who have been aggrieved by the use of any unlawful, unfair and deceptive acts and practices alleged herein.
4. An Order of this Court issued pursuant to § 407.100.6 awarding the State a civil penalty from Defendants, jointly and severally for each violation of § 407.020 that the Court finds to have occurred.
5. An Order of this Court issued pursuant to § 407.140.3 ordering Defendants, jointly

and severally, to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendants, or such other amount as the Court deems fair and equitable.

6. An Order of this Court issued pursuant to § 407.130 requiring the Defendants, jointly and severally, to pay all court and investigative and prosecution costs of this case.

7. Such other or additional relief as the Court deems just, proper and necessary in this action.

Respectfully Submitted,

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